

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

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On September 13, 2000, the water pollution control board (board) conducted the first public hearing/board meeting concerning the development of new rules concerning confined feeding operations at 327 IAC 16. Comments were made by the following parties:

Phil Anderson, Indiana Beef Cattle Association (IBCA)

Fran Best (FB)

Tom Biggs, Rose Acre Farms (RAF-TB)

Paul Brennan, Indiana State Poultry Association (ISPA)

Howard Cundiff, Proxy for Department of Health, Water Pollution Control Board (WPCB-HC)

Brian W. Daggy, Indiana Farm Bureau (IFB)

Melanie Darke, Proxy for Lieutenant Governor Kernan, Water Pollution Control Board (WPCB-MD)

Chips Everhart, Rose Acre Farms (RAF-CE)

Kevin Harness (KHAR)

Dan Harper, Maple Leaf Farms and Duck Coalition (MLF)

Bill Hayden, Sierra Club (SC)

Richard Hill, Save the Valley (STV)

Jim Hoyer, Citizens Action Coalition of Indiana (CAC)

Cal Jackson, Creighton Brothers (CBR)

Mark Legan, Water Pollution Control Board (WPCB-MLE)

Jane Martin (JMAR)

Bowden Quinn, Water Pollution Control Board (WPCB-BQ)

Dr. Thomas McSoley, Water Pollution Control Board (WPCB-TM)

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Danita Rodibaugh, Indiana Commission for Agricultural Development
Environment Committee, Indiana Pork Producers Association Public Policy
Committee (ICARD)

Rae Schnapp, Hoosier Environmental Council (HEC)

Keith Schoettmer, Indiana Pork Producer Association (IPPA)

Kent Smith (KSM)

Jim Tarnowski (JTAR)

Rebecca Vehslage, Rose Acre Farms (RAF-RV)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: The fiscal impact should have addressed potential changes in banking practices, phosphorous limits or alternative management methods, renewal applications, karst studies the application fee, legal costs, additional time costs for legal appeals and public hearings, and the use of commercial fertilizer in setback areas. This rule must be based on facts and actual data, not on omission and understatement. (RAF-CE) I would like more information on what the potential impact is on the real small farmer; I don't want to place too great a burden on the small farmer. (WPCB-BQ) The fiscal impact study does not represent the economic impact this rule will have on producers. (ISPA)

Response: The fiscal impact statement provides information on the approximate cost of compliance with the rule, as required by law. Many of the costs mentioned in the comment are case-specific and unquantifiable. Further, they do not come about due to compliance with the rule. IDEM has worked with many constituents to develop the numbers represented in the fiscal impact statement. IDEM believes it accurately reflects the range of costs incurred by complying with the rule.

Comment: The duration of the permitting approval would make it difficult to get financing for a confined feeding operation in Indiana. (KHAR) (RAF-TB) (RAF-TB) (IPPA) In relation to approval renewal that could be set for less than five (5) years, lending institutions will not assume the risk of loaning money to an operation that has an undetermined permit renewal period. There is no criteria in the rule to determine how the commissioner will set the length of time for a permit. Approval renewal should be set for a specified period of time, not left open-ended or to the discretion of one (1) person. (RAF-RV) I would encourage IDEM to talk to the Indiana Agricultural Banking Association in relation to the fiscal impact and the five (5) year permit. (WPCB-MLE)

Response: IDEM presently issues approvals to confined feeding operations which are required to submit a manure management plan every five (5) years in order to maintain a valid approval. This is a form of renewal and has not been shown to have an impact on agricultural lending practices. The proposed rule changes do not require a large change from this existing condition. IDEM currently issues five (5) year renewals to a large number of industrial businesses that have large capital investments. The five (5) year renewals have not been shown to have a noticeable impact on loaning practices.

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Within U.S. EPA Region V, Illinois, Minnesota, and Wisconsin have had five (5) year renewal permits in place. None of these states have experienced a change in agricultural lending practices based on a five (5) year renewal requirement. Since IDEM's proposed requirements for renewal are equivalent or less burdensome compared to these states, IDEM does not expect a change in lending practices in Indiana.

IDEM discussed agricultural banking practices with the Indiana Banking Association in relation to the fiscal impact and a five (5) year permit. IDEM performed a lenders survey of a portion of the members at their National Conference. Based on follow-up discussions with the agricultural bankers and discussions with agricultural economic specialists, and based on the results of the survey, IDEM did not find evidence that a five (5) year renewal for sites that have a good compliance history, would create a noticeable change in Indiana agricultural banking practices.

IDEM will continue to discuss banking issues to determine whether any revision to the fiscal analysis is needed. IDEM will also review the timing of the requirement to submit a renewal application.

Comment: The proposed rules add excessive cost and will make it extremely difficult for any confined feeding operation to be established in Indiana and will put a huge unnecessary financial burden on the existing facilities. (KHAR) For the most part, the rule here before you today, although costly financially, is one that producers can embrace. There are a few areas that still need some changes. In a number of places there is language that in its literal sense is impractical. Other areas in the rule attempt to go beyond the bounds of water quality. (ICARD)

Response: IDEM believes this rule provides a practical and cost-effective way to ensure good management practices and to protect water quality. As noted elsewhere, some revisions to the rule language to address specific rule language comments made at the hearing will be made.

Comment: I depend on the state rules to protect my home, my family, and my water. Please help me. (JMAR)

Response: IDEM believes these rules are protective of water quality.

Comment: This rule should not serve as the vehicle for community debate on issues related to industry consolidation, farm size, and other farm/social concerns. (IBCA)

Response: IDEM action on a confined feeding operation under this rule will be limited to the requirements in the rule and underlying law. IDEM will not base regulatory decisions on issues not addressed in the rule or law.

Comment: This rule should be referred back to IDEM. (RAF-CE) (RAF-RV) The board should postpone preliminary adoption and direct the agency to soften the rules to protect the citizens of Indiana. (HEC) Though we do think there needs to be a rule, we're not encouraging adoption at this time because we believe there are some changes that need to be made to the rule. (STV) (SC) We can support the rule if the changes we recommend are adopted. (ISPA) This rule does not adequately protect our water quality. (KSM) It is imperative that we preliminarily adopt this rule today with the understanding that work is still needed in various sections within the document. (WPCB-MD)

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Response: Various commentors urged that additional time be taken prior to preliminary adoption to address issues raised at the hearing or in other forums. The Board preliminarily adopted the rule. IDEM will continue to work on addressing issues raised at the hearing and the subsequent comment period.

Comment: There are two (2) references in 327 IAC 16-1-2 to rule citation that are not specified and this needs to be changed. (WPCB-HC)

Response: IDEM will replace these references with specific compliance schedules.

Comment: In 327 IAC 16-2-1(5), while we need to account for biosolids and commercial fertilizer, leaving this open-ended is not practical. (ICARD)

Response: In the same way that additional nutrient sources such as legume credits and process wastewater must be considered in determining the agronomic rate, a producer that has biosolids or commercial fertilizer applied to fields that will also receive manure, should include those nutrient sources when calculating an agronomic rate appropriate for that field in relation to the application of manure. This is consistent with best management practices currently in use by the agricultural community.

Comment: Discharge from point sources must be clarified to include land application or injection. Manure application should be defined as a point source. (STV)

Response: Only in a few specific cases has land application of manure been considered a point source for purposes of the Clean Water Act. This issue is currently undergoing legal review on the federal level.

Comment: Add a definition of "groundwater" from 327 IAC 2-1-9 Water Quality Standards, to the rule. The definition reads: "Groundwater" means such accumulations of underground water, natural or artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this state, but excluding manmade underground storage or conveyance structure. This definition resolves a conflict of how manmade structures are interpreted within the rule. "waters of the state" definition. (IFB) (WPCB-MD) (IBCA) If contaminated water is in a field tile and then makes its way to "waters of the state" then the law should take effect. If it is in the tile and does not make its way to a stream or other water body of the state, there is no water quality violation. (IBCA)

Response: IDEM will add this definition to the proposed rule.

Comment: The definition of "owner/operator" 327 IAC 16-2-30(b), should not prevent the confined feeding operation owner from entering into a contract allocating responsibilities with his contractors. (IFB) The language in the contract between two (2) producers in a contract-production situation concerning who is responsible both financially and functionally for the nutrient utilization from a facility is not sufficiently addressed in 327 IAC 16-1-1. Ideally, when a contract is signed and responsibilities are assigned also, that contract should control in the event of an action by IDEM. Under the current language, multiple parties are vulnerable to an IDEM action. It should be the person or firm that causes the action. (IPPA) Amend 327 IAC 16-1-1 to add language from Indiana Code 13-30-9-3(b) to create a new subsection (c) to read, "If parties have entered into a contract that allocates the cost or responsibility

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for the removal or remedial action, the terms of that contract control the allocation of cost between the parties to the contract, however, the terms of a contract may not effect the recovery of cost by the state unless the state is a signatory to the contract. (WPCB-MD)

Response: The provision in IC 13-30-9-3(b) is in reference to environmental legal actions (i.e., court cases) **Against a person who caused or contributed to the release of a hazardous substance or petroleum into the surface or subsurface soil or ground water...** IDEM does not equate manure with **a hazardous substance or petroleum**. Liability in cases of a spill or discharge must be determined based on the specific situation in which the violation occurred. This rule does not affect any remedy any party has under a contractual agreement.

In case of a violation, IDEM pursues action against the responsible decision maker at a facility. As a contract may assist with clarifying responsibility, IDEM will use that information appropriately. IDEM will provide examples in the guidance document of how contractual arrangements affect an enforcement action.

Comment: The definition of **a sensitive area**, 327 IAC 16-2-35, should be qualified by the addition of **water quality** to define specific threat. IFB supports protecting the sensitive areas defined as aquifers, public water supplies and wellhead protection areas, but we believe that the language defining special protection for critical habitat for endangered species or historic sites places an undue burden upon a livestock producer and may impact the producer in areas which cannot be foreseen. The critical issue should be protecting those sensitive areas, which are directly related to water quality issues only. (IFB) The phrase **water quality** should be inserted between **a specific** and **a threat**. (IBCA) (WPCB-MD) In 327 IAC 16-2-35, sensitive areas should be limited to water quality threats. (ICARD)

Response: IDEM will insert the phrase **water quality** between **a specific** and **a threat** in 327 IAC 16-2-35.

Comment: In 327 IAC 16-2-43(1) and (8), regulating **drinking water** and **precipitation** which comes into contact with any raw material, intermediate product, or final product used in or resulting from the production of animals, poultry, or direct product as manure is not scientific or accurate. It would require us to include drinking water and storm water in our management plans, and would greatly increase the amount of land needed to apply something that is not manure. Waste water is already covered under land application regulations. (RAF-RV) In 327 IAC 16-2-43(8), how are we supposed to contain precipitation that comes in contact with raw materials and some intermediate products on our farm? Does this mean corn in the fields, hay bales or even a little feed on the ground? We need to think about that. (ICARD) The definition of **waste liquid**, 327 IAC 16-2-43, should be amended by the removal of subsection (8). A broad interpretation of **raw materials** could be construed to include a producer's crops growing in the field. Handling storm water run-off from fields as a waste liquid does not fit the intent of this rule. (IFB) (WPCB-MD) We need to recognize that our raw materials are out there in nature in which we work. (IBCA)

Response: Drinking water and precipitation do not need to be managed as manure unless they have come into contact with manure as defined in 327 IAC 16-2-22 or waste liquid as defined in 327 IAC 16-2-43. Poultry drinking water has sometimes been found to be high in ammonia. IDEM will continue to review the language in 327 IAC 16-2-43(8) and modify the rule as necessary to ensure that material

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that would pose no water quality threat is not included in this provision.

Comment: I don't understand the use of the term "unpermitted" in 327 IAC 16-3-1(a) and (c) when we're saying that the approval serves as a permit. Somebody who had a discharge would then say that it is not an unpermitted discharge because they have an approval that is the equivalent of a permit. It should just say to avoid a discharge to waters of the state. (WPCB-BQ)

Response: It is possible to have a permitted discharge under an NPDES permit for manure that has been treated. Use of the term "unpermitted" is meant to apply to all other cases of a discharge at the confined feeding operation. If the rule serves as a general permit and therefore as an NPDES permit, the permit will have a zero (0) discharge criteria for manure. A facility that also treated manure for discharge would be doing so under a separate permit, not under the general NPDES permit.

Comment: In 327 IAC 16-4-2(3), the phrase "threatening to cause harm to the environment" causes concern relating to how it would be interpreted legally. (ICARD)

Response: The rule language previously stated that the approval may be modified, revoked and reissued, or terminated for cause. The language was changed to clarify that the cause would have to be a threat to cause harm to the environment. Protection of the environment is IDEM's mission and "threat to cause" is statutory language. A decision by IDEM based on this provision is appealable under IC 4-21.5. Specific details on what IDEM considers a "threat to cause harm" will be discussed in the guidance document.

Comment: The requirements for larger operations in 327 IAC 16-4-3 discriminates against large operations and assumes that large operations are not well managed and have more spills or discharges than smaller operations. This is inaccurate. This requirement will significantly increase litigation costs for both IDEM and large confined feeding operations. This has been ignored in the fiscal impact statement. (RAF-RV) Additional requirements for large operations in 327 IAC 16-4-3 and 327 IAC 16-7-13(a)(2) are arbitrary and capricious. (ISPA)

Response: The requirements in 327 IAC 16-4-3 are not based upon an assumption that larger operations have more spills or discharges. It is in recognition of the fact that if a spill or discharge occurs it could be more severe than a similar problem at a smaller operation that has less manure on site. A larger operation is likely to have a potential impact on a greater number of people and therefore, it makes sense to provide opportunity for those people to express their thoughts and concerns prior to approval. The size cutoff for this section currently represents the top one percent (1%), based on size, of approved CFO sites in Indiana. The notice requirements in 327 IAC 16-7-12 are statutory and must be followed by all new confined feeding operations, regardless of size, that propose to construct in undeveloped land.

Comment: IDEM should not grant the equivalent of a general permit for confined feeding operations. Large operations should be individually reviewed and required to get a permit just like any big industrial company. A public hearing should be held before new permits are granted. Existing operators should be required to get a permit within five (5) years. (SC)

Response: IDEM individually reviews each application and has the authority to require public hearings

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when deemed appropriate. Existing operators will be required to submit a manure management plan within five (5) years and the approval renewal will be part of that process.

Comment: Cattle operators should apply for and obtain an NPDES permit and they should utilize land application sites that are inspected and approved by IDEM. (STV)

Response: All confined feeding operations are treated the same regardless of animal species. Land application sites on soil survey maps are required to be submitted at least every five (5) years with the manure management plan by all approved confined feeding operations. IDEM reserves the right to inspect land application sites as appropriate. IDEM does not believe it is necessary to approve each land application site in Indiana.

Comment: I am concerned about the fact that this is a permit and with public participation requirements that go along with it. In 327 IAC 16-7-13, I don't think there needs to be a division between larger operations and the rest of them. There should be public notification and the opportunity for public comment and potentially a public hearing in all cases since these are to serve as permits. The division between the large and small operation of twenty (20) times the numbers is excessive. Anyone in the watershed who is potentially drinking ground water that could be affected by that operation should be notified and should have the opportunity to comment and request a public hearing. (WPCB-BQ)

Response: IDEM has the ability to require a public hearing for any approval application. Adjacent landowners are notified for all new operations. IDEM will continue to review comments on the distinctions between large operations and others.

Comment: This rule creates a false assumption that an operation meeting the regulations is protecting water quality. In doing so, it limits the ability of citizens to appeal confined feeding operations. (HEC)

Response: IDEM believes that an operation that meets the requirements of the rule will not be contributing to water quality problems. The rule does not limit appeals of agency actions.

Comment: Applicants appear to not have to give legal notice to residents, they just have to make a reasonable effort. Some of our property owners are not even notified. (FB)

Response: The language regarding the notice to adjacent landowners is statutory (IC 13-18-10-2(b)), including the criteria of making a reasonable effort to notify adjacent property owners. Clarification on the actions on the part of the applicant that will satisfy a reasonable effort will be described in the guidance document.

Comment: A lot of family farms have over one million dollars (\$1,000,000) invested in their assets, and I am concerned with the potential that someone could move in next to them and hold up that permit for reasons other than water quality. (WPCB-MLE)

Response: IDEM issues an approval based on water quality considerations under the conditions of this rule and the underlying law. Although IDEM may hold a public hearing when it is determined that one is warranted, denial of an approval would have to be based on criteria established in the rule or underlying law considerations.

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Comment: Language in 327 IAC 16-7-13(d) should be modified to add water quality as the defining concern or point of public interest triggering the commissioner to hold public hearings on a confined feeding approval application. Public hearings should be held only when unanswered water quality issues arise. (IFB) (IBCA) Amend 327 IAC 16-7-13(d) to read, "Such a hearing shall be held with where the commissioner finds that there is significant public interest relating to water quality in the approval application." (WPCB-MD) In 327 IAC 16-7-13(b), the hearing should relate specifically to water-quality issues, not broad environmental issues. (IPPA)

Response: Water quality concerns are only one (1) issue that may be appropriate for a public hearing. Other issues involving compliance with this rule or underlying law such as improper notice of application, a deficient application, or a potential threat to a sensitive area as defined in 327 IAC 16-2-35 may also trigger an interest in a public hearing. Specific examples of instances in which a hearing would not be called will be included in guidance.

Comment: In relation to 327 IAC 16-7-13, county commissioners should be consulted to determine if a public hearing is required as a result of issues raised during the mandatory public comment period for operations that exceed the statutory animal numbers by a factor of 20. (IFB)

Response: In accordance with 327 IAC 16-7-13(b)(3), the department must notify local officials in accordance with IC 13-15-3-1, which includes the county executive of a county affected by the permit application. IDEM will consider any input from county commissioners, other county representatives, and any other commentators in making a determination on whether a public hearing is required.

Comment: The requirement for mandatory hearings for a five (5) year renewal on facilities which have had an enforcement action should be changed to facilities which have had an adjudicated action. (ISPA, CBR)

Response: Whether an action is adjudicated is not necessarily related to the severity of the violation. Severe violations could be settled outside of adjudication, therefore adjudication does not bear on whether there is a public hearing.

Comment: Rather than "not to exceed five (5) years, the approval renewal should be established at five (5) years. (ISPA) The five (5) year renewal process is a major change that causes significant concern. The cost could be astronomical. If there are additional requests from IDEM, we would likely have to hire outside consultants to put together a renewal or even a modification application just as if we were applying for new construction. (ICARD) There needs to be more clarification on the renewal time frame. (WPCB-TM)

Response: As defined in IC 13-11-2-157, a permit includes approvals for confined feeding operations as another type of authorization required before construction or operation. This applies to all pollution control laws defined in IC 13-11-2-165, including IC 13-18-10. According to IC 13-15-3-2(a), a permit may be issued for any period determined by the department, but not to exceed five (5) years. In accordance with IC 13-15-5-1(a), IDEM may publish a notice requesting comments concerning the issuance or denial of the permit. In addition, under (d), the commissioner, in response to a written request, may hold a public hearing in the geographical area affected by the proposed permit on the question of whether to issue or deny the permit.

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It is not anticipated that renewals will be for less than five (5) years except in situations where there have been major water quality violations that have not been resolved or an effort is initially made to schedule the renewal cycle for all the confined feeding operations on a reasonable schedule for administrative purposes.

Comment: Setback distances to property lines for application of manure will make farmers that use manure either not buy our manure, or also buy commercial fertilizers. This will significantly hinder our ability to make the sales each year that we have for over ten (10) years which could impact Rose Acre Farms over one million dollars (\$1,000,000) a year. (RAF-TB)

Response: As a supplier of manure for fertilizer, persons are obligated to provide information relating to compliance with the land application requirements of the rules to anyone receiving the manure. This rule does not regulate commercial fertilizer. However, IDEM is aware of its potential water quality hazards if it is applied in an unsound manner. Entry of commercial fertilizer or manure into waters of the state is a violation. Under 327 IAC 16-10-4(d), it is possible to obtain waivers that would allow setback distances to property lines to be reduced.

Comment: CAFOs and land application should be located at least two thousand five hundred (2,500) feet from any well utilized for drinking water. (STV)

Response: IDEM believes the preliminary adopted rule provides an adequate setback distance and no specific justification has been provided for an alternative setback.

Comment: The setback distances are too small, especially the zero (0) setback if it is injected. (JTAR)

Response: IDEM believes these setbacks are protective of water quality based on field experience.

Comment: In 327 IAC 16-8-2(a)(2), the setback for a dry manure facility should be one hundred (100) feet rather than three hundred (300) feet. (ISPA) We would like a little bit of consideration on the setback issue. (MLF)

Response: IDEM has provided flexibility in 327 IAC 16-5 for alternate design or compliance approaches and innovative technology that may be used to replace a requirement in the rule. IDEM is reviewing the situations in which this setback applies and will make a final recommendation to the board at final adoption. One (1) concern with a smaller setback is the potential deposition of materials from large ventilation systems.

Comment: The risk posed by liquid and dry manure is different. I request that you evaluate that component. This would be a better criteria for assessing risk than the size of the operation. (CBR) There needs to be more clarification on wet and dry manure. (WPCB-TM)

Response: IDEM has provided flexibility in 327 IAC 16-5 for alternate design or compliance approaches and innovative technology that may be used to replace a requirement in the rule. IDEM has experienced a number of problems with large turkey and chicken operations. If an applicant can demonstrate that dry manure can safely be handled differently than wet manure, then IDEM can

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approve a different handling method. Additional clarification will be provided in the guidance document.

Comment: Our main concerns are related to water quality. We are concerned about what is considered a ditch in relation to setback requirements, including an open ditch and a covered ditch that still runs overflow of storm water. We are also concerned about possible contamination of our wells, drainage waters, standing waters, and waters of the state. (FB)

Response: IDEM believes the proposed rule will provide protection of waters of the state and wells. In the proposed rule, a ditch that carries water, continuously or intermittently, qualifies as surface waters and the associated setbacks must be followed.

Comment: Tippecanoe County setbacks are a problem for adjoining landowners. We cannot locate a house within one thousand (1,000) feet of a hog confinement property. If there are any setbacks required as there are in Tippecanoe County, they should be at the expense of the applicant who is putting the facility up. He should provide the total setback and not push us back into our own property. (FB)

Response: The setbacks in the proposed rule only apply to the confined feeding operation, not to adjoining landowners. The proposed rule does not supercede local zoning requirements.

Comment: The current rule language falls short of addressing the concerns we presented to the Water Pollution Control Board in October 1997. We wanted: inspection of manure storage structures before they were put into use, ground water monitoring of those structures to detect leaks before they became disastrous, application of nitrogen and phosphorous at fertilizer rates, and no confined feeding operations located in sensitive areas. (HEC)

Response: IDEM believes that the rule adequately addresses these four (4) environmental concerns. IDEM will receive notification prior to construction to allow an inspection of the construction of a manure storage structure. IDEM may require ground water monitoring for structures if it is determined to be necessary. In most instances, the design and construction requirements should suffice. The rule requires application of nitrogen at agronomic rates and allows requirements to be specified for phosphorous if it is determined to be necessary. Also, the rule adequately protects sensitive areas.

Comment: In relation to inspection of the manure storage structure, we do not feel the confined feeding facility operator has the expertise to certify that construction was according to the design. Concrete can be watered down at the construction site, the site may not be properly prepared. (HEC)

Response: There is a statutory requirement in IC 13-18-10-2.2 for the applicant to submit an affidavit. The applicant is responsible for hiring consultants, engineers or contractors to assure the structures are built in accordance with the approval. IDEM is implementing a construction inspection program.

Comment: How is the commissioner going to determine whether ground water monitoring is warranted? The rule language allows the commissioner to decide, but we have very little information about the performance of our current design standards. We don't know how much leakage is occurring at facilities that are properly designed right now. (HEC) Monitoring wells should be required to measure

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the water quality on an ongoing basis. (JMAR) More stringent monitoring is needed. (SC) I am concerned about the inspection on lagoons and monitoring wells. (WPCB-BQ)

Response: IDEM can require monitoring wells if deemed necessary to protect human health or the environment under 327 IAC 16-8-3(c). Specific examples of when ground water monitoring would be required will be addressed in guidance.

Comment: The current rule language does provide for nitrogen to be applied at fertilizer rates, but there is no opportunity for public scrutiny. Land application records are proprietary. The rule creates the expectation that if you are complying with the rule, you are meeting water quality standards. But an operation could be contributing to phosphorous problems in the watershed. The rule should include fertilizer rates for phosphorous. (HEC) These rules should not be approved unless they have a means of adequately addressing the nitrogen and phosphate content of manure when it is applied to the soils. (KSM) Land application should be limited to agronomic rates. There should be a phosphorous standard (SC) (WPCB-TM)

Response: Land application rates and information must be kept by the operator and made available to IDEM during an inspection. Phosphorous has been identified as having a potential maximum range within the soil before it also becomes mobile and lost via leaching. Extensive research is being conducted by academia and IDEM will be informed when a consensus of recommendations relative to phosphorous limits are formulated. IDEM will be studying phosphorous in watersheds over the next two years. The proposed rule provides a mechanism to recognize phosphorous as a limiting factor in the future if necessary. Additional information about phosphorous soil parameters will be addressed in guidance.

Comment: I have concerns about land application conducted around my home and the contamination in my drinking water from my well. The problem is there is no monitoring to find out if someone is over applying. Land application records are secret. (JTAR)

Response: Records will be reviewed by IDEM during an inspection.

Comment: Though the commissioner could impose additional requirements for operations in sensitive areas, it will be difficult to determine which sites are sensitive without monitoring ground or surface water. (HEC)

Response: Sensitive areas are clearly defined in 327 IAC 16-2-35. The draft rule contains extra precautions for sensitive areas or they are prohibited.

Comment: I am concerned that the rules are insufficient to assure clean water in my neighborhood. Specifically, 327 IAC 16-8-12(a) refers to minimizing leaks. Minimal leaks is not defined. If it is in comparison to the total contained in the lagoon, a minimum leak could cause significant damage to the water. Lagoons should be lined and inspected by qualified people before they are put into use. (JMAR)

Response: IDEM believes that the proposed rule will protect waters of the state. A leak that is less than the seepage rate in 327 IAC 16-8-6 of one-sixteenth ($\frac{1}{16}$) inch per day would be considered minimal. IDEM has the ability to require more protective measures such as liners, and has the ability to inspect

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manure storage structures during construction.

Comment: In 327 IAC 16-9-4(a)(1)(B) on developing the emergency spill response plan by the effective date of the rule, I'm not sure you can make these people comply with the rule on the effective date of the rule. It seems like we're having them do something before the rule is effective and that may not be legal. (WPCB-HC)

Response: IDEM concurs and will provide thirty days after the effective date of the rule for existing operations to develop the emergency spill response plan. This is a compliance schedule that will be addressed in 327 IAC 16-1-2. IDEM will provide forms that may be used to assist developing the emergency spill response plan.

Comment: In 327 IAC 16-10-3(a)(1), the time should be expanded to seven (7) days for dry manure staging. (ISPA) (CBR) The dry manure storage staging area does present some problems for us. (MLF)

Response: The proposed rule already allows for a longer staging time if the manure is covered or otherwise protected. IDEM has provided flexibility in 327 IAC 16-5 for alternate design or compliance approaches and innovative technology that may be used to replace a requirement in the rule. If an applicant can demonstrate that a particular type of manure does not pose a problem when staged at the land application site, a longer staging time can be approved.

Comment: The rule fails to address some health issues associated with land application of untreated waste. A recent study at Purdue University shows that bacteria were surviving and multiplying in soils that were amended with manure for a six (6) month period. Industry trends toward incorporating manure to minimize odors are likely to enhance the survival of these bacteria. There is also an industry trend toward more use of antibiotics even on animals that are not sick. We're creating a situation where we're releasing untreated, antibiotic-resistant bacteria into the environment under conditions that will enhance their survival. (HEC) There are possible health risks due to the manure application. The manure may include dead animals that are composted in the wood piles. Are the individuals that spread it qualified to detect when it is composted properly or are we getting animal parts on our fields, in our run-off water and on our property? (FB)

Response: As the science of nutrient management and land application evolves, it is anticipated that the rules will also evolve. The commissioner can impose additional requirements to protect human health and the environment. At this time, IDEM does not have evidence of human health concerns with properly applied manure.

Comment: The proposed rules do not incorporate innovative regulations that are being used and/or promulgated in other states to deal with the unique problems that result from the concentration of massive, untreated volumes of animal waste in a confined area. (CAC)

Response: This rule attempts to require sound management practices to an evolving industry. The rules represent sound environmental practices in Indiana. Other states have unique issues relative to soil type etc. that may result in different approaches.

Comment: Other issues such as air pollution from ammonia and hydrogen sulfide should also be

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addressed by IDEM drafting rules for the air pollution control board. (SC) These rules fail to address the transfer of pollutants from the water into the air and back to the water. (JMAR)

Response: This rule is limited in scope to addressing water quality issues. IDEM will continue to research issues related to air pollution and odors from confined feeding operations and work with the public to take any appropriate action.

Comment: Contingent upon final approval of this draft rule, adequate time must be given to the regulated community for implementation in order to meet the requirements of the rule. (WPCB-MD) We need adequate time as agricultural organizations to work with our members on compliance. For instance, the time frame for manure and soil testing in 327 IAC 16-6-1(d) using July 1, 2001, is too short of a time for final adoption. (ICARD)

Response: IDEM intends to provide adequate time for the regulated community to comply with the proposed rule. In addition to adjustments to the effective date of certain sections which will be addressed in 1-2, IDEM and other agricultural organizations have been, and will continue to, provide outreach efforts to producers to educate them on the requirements of the proposed rule before it becomes effective.

Comment: Inspections should be unannounced. (STV)

Response: Inspections are generally unannounced although IDEM is making every effort to make contact with each operator prior to an initial inspection so that biosecurity measures at the specific farm will be known for future inspections.

Comment: Aren't there laws now that if a producer deliberately pollutes he is in violation of the law? Why do we need any new laws and unscheduled visits by IDEM if the producer has never had a problem? How can there be a threat to pollute when a producer has been in business for twenty (20) to fifty (50) years and never polluted before? (KHAR)

Response: This rule codifies sound management practices to prevent future problems. A threat to pollute, which is statutory language, can be very case-specific. In those cases, becoming aware of a potential problem can prevent an actual problem which could cause a violation of the rules.

Comment: Why is there a fine when an accident happens? Why doesn't IDEM help the producer fix the problem? (KHAR) There should be a schedule of fines for knowing violations. (STV)

Response: IDEM takes formal enforcement action pursuant to IC 13-30 whenever it is determined that a significant violation of a rule or law occurs, and that enforcement is needed to obtain compliance and as a deterrent to future potential problems. The statute provides information on civil penalties that may be imposed. In most instances, IDEM works to provide operators with needed information upfront and to work individually with operators to resolve any problems, as cited in 327 IAC 16-4-4, prior to taking an enforcement action.

Comment: Once these facilities are approved, they impact our property values and lifelong residents put their properties up for sale, eroding our communities. Our use of the natural environment is definitely

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diminished. Local traffic is also a concern since this affects our road safety. They also impact our small family-owned and operated hog operations. (FB)

Response: Issues related to the specific location of a confined feeding operation are generally a local issue, often handled through local zoning and planning ordinances. These proposed rules are only addressing requirements to protect water quality, not traffic or property values.

Comment: There are those who would allow EPA to continue to interject recommendations and their new requirements. While these should not be simply dismissed, EPA should not be allowed to hold Indiana's rulemaking process hostage while it constantly changes both the game and the rules. (IBCA)

Response: IDEM will continue to work with all interested persons, including U.S. EPA, to resolve any differences that exist about the content of the preliminarily adopted confined feeding rule. IDEM's primary aim with this rule is to establish legal requirements to protect water quality. IDEM will also work with U.S. EPA to attempt to satisfy their concerns relative to their interpretation of federal Clean Water Act requirements.